IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 01.10.2007

Coram

The Honourable Mr. Justice M. CHOCKALINGAM

W.P. No.8208 of 2006

and

W.P.M.P. No.9129 of 2006 and
W.V.M.P. No.211 of 2007

Er. S. Sagayaraj ... Petitioner

..vs..

1. State of Tamil Nadu,
rep. by its Secretary
to Government,
Public Works Department,
Fort St. George, Secretariat,
Chennai - 600 009.

2. The Engineer-in-Chief,
WRO & Chief Engineer
(General) PWD,
PWD Campus, Chepauk,
Chennai - 600 005. ... Respondents

Petition under Article 226 of the Constitution of India, praying to issue a writ of certiorari, to call for the records of the second respondent in Charge Memo No.CII(1)/5527/2003-32 dated 25.11.2005 and quash the same.

For Petitioner : Mr. S.T.S. Murthi

For Respondents : Mr. R. Jothimanian,
Addl. Govt. Pleader

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Challenging the Charge Memo No.CII(1)/5527/2003-32,dated

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25.11.2005 given by the second respondent, the petitioner has brought forth this writ petition.

2. Affidavit filed in support of the writ petition and counter affidavit are perused. The Court heard the learned counsel appearing on either side.

3. Concededly, the petitioner, who is an Assistant Executive Engineer, while functioning as Research Officer - I at Public Works Department Soil Mechanics and Research Division, Chepauk, Chennai, was served with a charge memo dated 25.11.2005 issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, levelling four charges against him. The gist of the four charges is that he had not handed over his section charges to his successor in a complete form and due to his failure in attending the reconciliation work and to set right the discrepancies, there was a shortage of materials worth about Rs.2,58,521/- and he had failed to maintain integrity and devotion in his duty. On service of charge memo, the petitioner has approached this Court by way of this writ petition to quash the same.

4. In support of the writ petition, learned counsel would submit that a reading of the charge memo would clearly indicate that the period was from 14.10.1992 to 29.10.1996. According to the department, the petitioner has not handed over his section charges to the successor in a complete form. Apart from that, he had failed to secure the Government materials, which resulted in shortage to the tune of Rs.2,58,521/- and he did not set right the discrepancies and he had also not attended the reconciliation work and thus, he had failed to maintain integrity and devotion in his duty as warranted under Rule 20 of the Tamil Nadu Government Servant Conduct Rules, 1973.

5. In the instant case, when the charges relate to the period of 14.10.1992 to 29.10.1996, the instant charge memo, levelling charges against the petitioner, was served upon him on 25.11.2005 i.e. after 9 1/2 years and thus, it would be quite devoid of merits and truth. As per the Government orders in G.O. Ms.No.2201 dated 9.11.1982 issued by the Public Works Department, a maximum period of sixty days is given for the relieving Officer to prepare the list of discrepancies and their value. G.O.3(D) No.38, Public Works (E2) department dated 23.5.1997 prescribes procedures to be followed in respect of shortage of materials/non handing over of charges etc, which are pending for more than one month.

6. It is also stated in the said G.O. that the reconciliation of accounts should be done at the time of handing over of charge . In the instant case, though the charges levelled against the petitioner pertains to the year of 1992-1996, there is a long

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lapse of 9 1/2 years and thus, the inordinate delay in initiating the disciplinary proceedings would suffice to quash the charge memo issued to the petitioner. In support of his submissions, learned counsel relied on the decision reported in the case of MAHADEVAN, P.V. v. M.D., TAMIL NADU HOUSING BOARD (2005(4) CTC 403).

7. Contrary to the above, learned counsel appearing for the respondents would submit that it is true that all the charges levelled against the petitioner pertains to the period between 1992 and 1996, but the charges levelled against him were grave. Though so many opportunities were given to him for setting the things right, he did not avail the said opportunity and the delay was caused only by the petitioner. Apart from that, due to shifting of headquarters, the material records such as charge papers, work registers and old M.A.S. accounts under discrepancies as pointed out by the then Junior Engineer could not be easily traced out. Hence the delay was caused. Thus the delay in initiating the disciplinary action against the petitioner was neither inordinate nor without any reason, but due to the aforesaid reasons. Under the circumstances, the department should initiate action against the petitioner and the writ petition has got to be dismissed.

8. The Court paid its anxious consideration on the submissions made by either side. After looking into the materials available on record, the Court has no option than to quash the charge memo. As could be seen from the records, four charges were levelled against the petitioner. The gist of the same is that the petitioner did not hand over the section charges to his successor in a complete form and due to his alleged failure in attending the reconciliation work and to set right the discrepancies, there was a shortage of materials worth about Rs.2,58,521/- and thus, he failed to maintain absolute integrity and devotion in his duty.

9. It is pertinent to point out that the very reading of the charge memo would clearly indicate that all the allegations made against him is in respect of the period between 1992 and 1996, but the instant charge memo was served upon him on 25.11.2005 i.e. nearly after 9 1/2 years. It is not in controversy that two G.Os. are available. One is speaking about the maximum period given to the relieving Officer to prepare the list of discrepancies and other one is speaking about the procedure to be followed in a case of shortage of materials/non handing over of charge.

10. As per G.O.Ms.No.2201 Public Works Department dated 9.11.1982, the stipulated period was sixty days and as per G.O.3(D) No.38 Public Works (E2) department, the stipulated period is one month. In the instant case, had the charges of the particular section was not properly handed over by the petitioner, the relieving Officer should have prepared a list of discrepancies and found out

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the shortage of materials. While the charge was handed over in the month of October, 1996, charge memo was served upon him on 28.11.2005. Thus, the Court is able to notice the inordinate delay.

11. The reasons given by the Department for such inordinate delay are that the delay was caused by the petitioner; that though so many opportunities were given to the petitioner, he did not avail the same and that there was a shifting of headquarters and hence the papers were to be traced. The reasons adduced by the department are quite unsound and unacceptable.

12. Insofar as the first reason is concerned, there is no material available to show that opportunity was given to the petitioner to set the things right. In the absence of any material, the said contention cannot be accepted. Insofar as the other reason is concerned, shifting of headquarters that too for a decade in a given case like this cannot be imagined. Under the circumstances, both the reasons adduced by the Department for the inordinate delay cannot be countenanced.

13. Apart from this, in the instant case, the Court is of the considered opinion that the decision of the Apex Court reported in 2005(4) CTC 403 referred to above relied on by the petitioner is squarely applicable to the instant case. Hence, without any hesitation, the charge memo has got to be quashed and the same is quashed. The writ petition is ordered accordingly. Consequently, the connected W.P.M.P. and W.V.M.P. are closed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssa.

To

1. State of Tamil Nadu,
   rep. by its Secretary
   to Government,
   Public Works Department,
   Fort St. George, Secretariat,
   Chennai - 600 009.

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2. The Engineer-in-Chief,
WRO & Chief Engineer
(General) PWD,
PWD Campus, Chepauk,
Chennai - 600 005.

+1cc to Mr.S.T.S.Murthi, Advocate Sr 61217

CU (CO)
km/11.10.

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